

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

<u>In the Matter of the Petition of:</u>	:	
The Jackson Municipal Employees Union	:	
DISTRICT COUNCIL # 40 LOCAL 1061	:	
AFSCME, AFL-CIO	:	
	:	
To Initiate Arbitration Between	:	Case 11
Said Petitioner and	:	No. 59397
	:	INT/ARB 9111
<u>VILLAGE OF JACKSON</u>	:	Decision No. 30150-A

APPEARANCES:

The Jackson Municipal Employees Union Local 1061
By Christina Bishofberger, Staff Representative,
Wisconsin Council 40, ASCFME, AFL-CIO.
Village of Jackson, by Lindner and Marsack,
S.C. by Jonathan T. Swain, Esq..

ARBITRATION AWARD

The Jackson Municipal Employees Union District Council #40 Local 1061, AFSCME, AFL-CIO (Union) is the exclusive collective bargaining agent for the regular full-time and regular part-time employees of the Village of Jackson excluding seasonal, confidential, supervisory, and managerial employees, the Village Clerk and Police Department employees. Village of Jackson (Employer) is a municipal employer within the meaning of Section 111.70(1)(J) of the Municipal Employment Relations Act. The parties have been unable to arrive at an agreement regarding the terms to the successor of their contract which expired on December 31, 2000. The Union filed a petition requesting the Wisconsin Employment Relations Commission (Commission) to initiate compulsory final and binding arbitration pursuant to Sec. 111.70 (4)(cm) 6 of the Municipal Employment Relations Act on November 20, 2000.

The Commission assigned a member of its staff to investigate the matter. The investigation was completed on May 7th 2001, and the investigator informed the Commission that an impasse existed. The Commission appointed the undersigned to act as arbitrator by order dated July 31, 2001.

After due notice to the public, the arbitration hearing was conducted at the Jackson Village Hall on September 5, 2001. Both parties presented oral and documentary evidence into the hearing record, which was transcribed. The transcript was mailed to the parties in September 11, 2001. The initial briefs were exchanged through the undersigned on October 19, reply briefs were exchanged on November 5, 2001.

ISSUES IN DISPUTE

The dominant issue in this proceeding is the Village's proposal to eliminate the medical reimbursement program which was incorporated into the parties 1998-2000 contract. Principal differences in the two offers are as follows:

1. Wages-The Village offered 3.5% across the board increases for the calendar years 2001 and 2002. The Union offered 3% increases for each year.
2. Other provisions included in the Village's offer would:
 - a. Add the Assistant Engineer and Assistant Building Inspector to the bargaining unit.
 - b. Discontinue the Medical Reimbursement Plan effective upon the Arbitrator's award.
 - c. Make changes in the Bereavement Pay Leave.

There is also a disagreement over which municipalities should be included in the pool of external comparables.

THE UNION'S POSITION

After reviewing the statutory criteria arbitrators are required to consider, the Union said that it believes that the internal and external comparisons are most relevant in this proceeding. It cited a prior decision in which Arbitrator Petrie noted that where the final offers are relatively far apart "more general and less specific comparison might be utilized, and such data may be quite persuasive to interest arbitrators" It said that the Village's proposal "would have an economic

impact for each of six employees of \$150.00 per month. For two employees, the loss is \$75.00 per month. Such disparity in the parties position would be inarguably be relatively far apart.”

The Union reviewed a series of arbitration awards from the period 1976-80 in which criteria for comparability were discussed. “The Union relies on geographic proximity and property values as well as income.” It argued that the external comparables pool in this instance should include Germantown, Hartford, Kewaskum, Slinger and West Bend. It noted that those five municipalities are all located in Washington County “and near the Village of Jackson.” The Union said that “Almost all arbitrators rely heavily on geographic proximity as a determining factor.” It argued that there is merit to limiting the comparable pool to Washington County, because “counties impose different financial requirements on its municipalities, thereby affecting the funds available for collective bargaining settlements.”

The Union noted that the adjusted gross income among its recommended comparables ranged from \$38, 556 in Kewaskum to \$49,206 in Germantown, with an average of \$49,206 compared to \$41, 037 in Jackson. It said that the Village of Jackson’s assessed valuation of approximately 197 million ranked fourth among the range from 141 million in Kewaskum to 1.396 billion in West Bend, and that, its total tax levy of 1.37 million ranks fourth “amid a range of \$769,721 to \$12,066,992. The Jackson levy rate of \$6.97 puts it fourth again in a range of \$8.84 to \$5.32.” The Union argued that the comparable pool that it recommends is preferable to that proposed by the Village, which includes Thiensville and Saukville located in Ozaukee County.

The Union cited arbitrated precedent that the party who recommends a change in “the status quo of the previous collective bargaining agreement... must fully justify its position and provide strong reasons and a proven need.” It argued that the Village did not offer such evidence. “The Village simply wants to take back what was negotiated because no community in the area has anything like it.” It said that the fact that the Village is paying more for health insurance than it did in 1998 is not evidence of a compelling need for change. It argued that without a demonstrated need to change the status quo the Village must offer a quid pro quo to achieve its proposed change in the parties’ contract.

The Union said that the Village's proposal to include the Assistant Engineer and Building Inspector "positions in this bargaining unit would not , in part, satisfy the quid pro quo." The Union argued that it is not required to negotiate over the inclusion of employees in the bargaining unit, and argued that it is not a proper subject for a final offer in arbitration proceedings. It said that, even if it was a proper subject in arbitration, the economic impact of \$45 a month in additional union dues would not offset the "negative impact to the Union of approximately \$1050 per month."

The Union said that there is no dispute "as to the history and circumstances surrounding negotiations for [the prior contract]." It noted that the Village now argues that "As healthcare costs have increased substantially in recent years... the savings are gone." The Union argued that the Village failed to show that it was no longer benefiting from the change in health plans in 1998, because it failed to present evidence of what current coverage and current premiums cost for the pre 1998 plan would be during the current contract period. "Without such calculations, it is speculation that there is no savings." The Union argued that it is safe to assume that the premium cost for that pre 1998 fee for service plan would have increased at a greater rate than premiums for the current "State Plan" have. It said that, such being the case, it would have "provided more savings if the Union had made the change now instead of three years earlier." The Union said that it had intentionally agreed to reduce coverage and limit access to health care in 1998 "by changing from a 'Cadillac' plan to a managed care plan." It said that it had done so with the "understanding that each party would benefit then and continue to benefit by such change. And the Village agreed to share. The only question became how to share the savings."

The Union said that it had made a number of suggestions for sharing the savings during negotiations for the prior contract. It said that the Village introduced the idea of the Medical Reimbursement Fund, the Union agreed that it was an appropriate quid pro quo for the change from the previous fee for service plan to the State Plan. "The Village now testifies that a sunset clause was not included and that they weren't bright enough to put that in." The Union argued that the failure to include a sunset provision reflects that the intent of the parties was to create an ongoing benefit. "It is with great caution that arbitrators disrupt the status quo by awarding in interest arbitration what (sic) not achieved in collective bargaining and certainly not without a quid pro quo."

The Union said that, though increased costs though changes in the State Plan are not attributable to the Village, both the Village and the employees are paying more for healthcare. Prescription drug co-payments have doubled, as have the out of pocket maximum co-payments. The number of available plans offered has been reduced from six in 1998 to two in 2001. It said that it is likely that in the future, employees will be forced to enroll in a plan where Medical Reimbursement monies are eliminated. It noted that the one employee who currently opted for the fee for service offering under the State Plan has seen her share of the premium increase from \$261 in 1998 to \$405 in 2001, “with the same \$75/month.” The Union said that it did not propose an increase in the Medical Reimbursement allowance “ in an attempt to share the burden of rising health care costs.”

The Union said that the difference between its wage offer for 3% and the Village’s offer for 3.5% is “an anemic \$16.06 per month for the highest rated employee and \$8.55 a month for lowest paid employees. It said this is not compensation for the loss of \$75. or \$150. a month in medical reimbursement.

The Union reviewed the Village’s proposal to change Bereavement Leave benefits, and said it “disagrees that the Village’s proposal is an increase to the bereavement leave. It said that it a concessionary proposal, because it reduces current benefits for the deaths of grandparents and grandchildren while increasing the benefit for the deaths of children-in-law. It argued that the proposed change largely restates existing benefits and either reduces or eliminates other benefits, “ and certainly does not meet the quid pro quo requirements to change the status quo.”

The Union said that the Village was relying on the fact that since other comparable municipalities do not have the benefit of a Medical Reimbursement fund neither should the Village of Jackson. It noted that the fact that comparables did not have this benefit did not prevent the Village from negotiating the benefit into the parties prior contract. It argued that those comparables that have “less than 100% employer paid health care it is reasonable to deduce that they received, wither at the table or in arbitration, a quid pro quo for premium sharing.” It said it is also reasonable to assume that those groups that held onto 100% employer paid health care gave quid pro quo to maintain the benefit. The Union said that there is a wide

disparity between the two offers in this proceeding. “The Village’s offer clearly comes nowhere near an acceptable ‘buy out’ of the Medical Reimbursement funds. It is simply mathematics.”

THE EMPLOYER’S POSITION

After reviewing the two offers the Village said that “ the principal issue which separates the parties in this matter is the elimination of the Medical Reimbursement Plan which provides for a Village paid annual allowance for non-covered medical costs in an amount of \$1800 per year (family) and \$900 per year (single).” It said that no other comparable community has such a plan. It explained that the plan was created to share the savings resulting from changing “from a traditional Blue Cross plan to the State Plan in 1998.” It said that most municipalities have changed insurance coverage in recent years to contain costs. “Further the savings to be shared in 1998 are no longer present.” The Village said that it was not reasonable for it to continue the plan when considering wages and benefits provided in comparable communities. The Village said that the most relevant factors for the arbitrators to consider in this instance are those set forth in Wis. Stat. 111.70(4)(cm)(7r) Secs. d,e,g,h and j.

The Village noted that it and the Union agreed that the Village of Slinger and Kewaskum, with populations under 5000 and assessed valuations under \$200,000,000, should be included in the comparable pool. It said that the other three municipalities recommended by the Union, Germantown, Hartford and West Bend, while geographically proximate, are too large to be considered comparable. It reviewed differences between Jackson and the larger communities. West Bend is a City and more urban, its population, 28,597, is seven times larger; it has seven times greater assessed valuation and 10% higher per capita valuation. Germantown has 3.5 times greater population, six times greater assessed valuation and its per capita value, \$69,940 is fifty percent higher than Jackson’s. Hartford’s population and assessed value are twice that of Jackson’s. The Village argued that Germantown, part of the “Milwaukee area community,” and West Bend the largest city in Washington County are too urban to be considered comparable. It cited arbitrator Ver Ploog’s recent decision in the town of Beloit and Firefighters Local 2386 dispute as authority for its position that the larger municipalities “have traditionally been found to be unhelpful in interest arbitration.”

The Village said that the two villages, Saukville and Thiensville with populations of less than 5000, assessed valuations of 194 and 207 million compared to Jackson's 210 million and similar sized units to Jackson's are comparable. It noted that Saukville and Thiensville are "roughly as close to Jackson as Kewaskum." The Village said that it does not understand why the Union did not propose Washington County as a comparable. The Village has provided information on West Bend and Washington County in order to show the context in which it fits into the larger community, particularly with respect to its nearest neighbors. "However, the Village maintains that neither are comparable."

The Village reviewed fourteen specific categories of benefits and wages currently being provided in Jackson, Kewaskum, Slinger, Thiensville, Saukville, Washington County, and in the city of West Bend. It concluded that except for longevity, the Village of Jackson is very competitive in every other category. It cited Jackson's 12 paid holidays, liberal vacation benefits, fully paid dental insurance and its disability coverage as examples of its leadership in providing fringe benefits. It cited evidence that Jackson also provides "very competitive" sick leave, bereavement leave, uniform allowances, retirement and miscellaneous fringe benefits. The Employer argued that the Union, having failed to make fringe benefit comparisons, "believes that the issue of medical reimbursement should be reviewed in the abstract and not in the context of the overall wage and fringe benefits provided." The Village argued that it is necessary to consider Jackson's overall benefit package when making comparable comparisons.

The Village reviewed the fact that the medical reimbursement plan, "was put in place as a way to share the savings the Village enjoyed when the parties agreed to switch from the Blue Cross major medical plan to the State Plan in 1998." It said that these savings were eliminated by 2001. The 2002 premium for the lowest cost HMO under the state plan is 20% higher than the 1997 cost of the old Blue Cross plan. "At 105% of the lowest HMO, the differential grows to 26%." The Village admitted that it saved money under the 1998-2000 agreement, but it said that it willingly passed more than half of those savings on to its employees. It said "there are no longer any savings and, therefore, no justification to maintain the accommodation reached in 1998."

The Village reviewed data for health insurance plans in effect in comparable communities, Washington County and the City of West Bend in 2001. It noted that while Jackson's employees are not required to contribute toward the \$262 single or \$704 family premium cost, employers in Kewaskum, Saukville and Slinger are required to contribute 7.5%, 5% and 5% respectively toward their plans premium costs. It noted that Thiensville, like Jackson, pays the full payment of the lowest cost HMO. It also showed that Washington county's single employees contribute \$41 toward their \$233 premium and they contribute \$97 toward the \$590 family premium. West Bend's single employees contribute \$10 toward their \$322 premium and, employees with family coverage pay \$20 of the \$726 premium cost. The Village said "only Kewaskum paid more for health insurance than Jackson, but it offers no dental coverage."

The Village said that no comparable community has a medical reimbursement plan like Jackson's. It argued that if the Village of Jackson retains its plan it will have "an overall welfare program which is substantially beyond that which any other area community is providing at a time when health care costs are increasing at alarming rates and employers are working to contain costs."

The Employer said that the Union's wage offer, 3% for each 2001 and 2002, is at the low end of voluntary settlements among the Union's proposed comparables. "Germantown was 3.5% in 2001 and 2002; Hartford was 3% (2001) and 4% lift (2002); Kewaskum was 3.5% each year; while Slinger was 4% both years; and West Bend was 3% in 2001." It said that Jackson's wages are competitive in Washington County, but "admittedly it is somewhat behind Saukville and Thiensville." It argued that its higher wage settlement is appropriate as a quid pro quo for the elimination of the medical reimbursement program, and to prevent "an erosion of Jackson's place among its comparables."

The Employer said that it had asked the Union to recognize "substantiated escalation in health care [costs] and changed circumstances since 1998. The savings which funded the medical reimbursement plan are gone. A change in the status quo is warranted and a quid pro quo is being offered." It argued that the Union's offer would "unfairly require the Employer to fund a benefit which no one else provides, while at the same time intentionally eroding the Employer's wage situation." The Village cited Arbitrator Malamud's decision, in Wisconsin Federation of

Teachers, Local 395, AFSCME, AFL-CIO and Wisconsin Indianhead Technical College, “wherein he discussed a change in status quo in the context of a need for change versus the Union’s failure to recognize the need, as well as a quid pro quo.” In that proceeding the employer, Indianhead, had a self funded health insurance program. Between 1984 and June 30, 1998 the employer paid the entire premium for basic coverage, which included prescription drugs, for both single and family coverage. During the prior contract period. To June 30th, 1998, the employer contributed \$156 for single coverage and \$401 for family coverage. The cost of family coverage for the new contract period increased to \$497 a month. In that proceeding the employers final offer eliminated its full premium payment and required dollar contributions from employees, \$28 for single coverage and \$70 for the basic family plan. The Union’s offer would have required the employer to continue to pay 100% of the premium cost. The Village cited parts of Arbitrator Malamud’s decision including the following:

[T]he arbitrator concludes that the escalation in costs supports the adoption of the Employer’s proposal as contrasted to the Union’s failure to recognize the need for an upward adjustment in the cap for prescription drugs. Some offer of a quid pro quo would seal the Employer’s case. None is forthcoming. However, on this issue, the Employer has demonstrated a need for the change.

The Village said that the fact that the purpose of arbitration is to “put the parties in the position they would have been in had they settled voluntarily... implies finding a balance in each settlement.” It argued that the Union’s proposal would erode the Employer’s wage position while maintaining a “unique and expensive health benefit contrary to the trend in health insurance.” It said that the medical reimbursement was not needed to offset employee costs, because under the State Plan, all of the employees can receive fully paid insurance under the Humana HMO. It noted that seven of the eight employees have already selected that coverage. It said that the one employee who has elected to take the standard plan would have to pay \$109 a month in 2001. It noted that the cost to the employee is \$1304 a year before the \$900 medical reimbursement allowance. “The annual cost of medical reimbursement for the unit is \$12,600 approximately the same cost as the Humana increase in premium from 2001 to 2002 .” The Employer said that in exchange it would pay future increases and provide for a permanent 1% increase in wages over two years.

The Village said that its proposal to change bereavement leave would add one day off for the death of a son-in-law, daughter-in-law, grandmother-in-law, and grandfather-in-law. It said this “change keeps pace with bereavement pay policies provided by its comparable communities.”

The Village said that in addition to this unit there is a police officers unit and there are unrepresented employees. It said that the medical reimbursement plan was terminated for non-represented employees effective January 1 2001. Its proposal to eliminate medical reimbursement for the police unit is currently a subject in another arbitration proceeding. The Village said its non-represented employees have a pool of money “which does not guarantee that their health benefits are 100% paid.” This benefit was rejected by the Union. The Village said that its offer reflects internal consistency with other village employees.

“The Village has demonstrated substantial justification for the elimination of the medical reimbursement plan. Further the Village has provided a quid pro quo by agreeing to an additional wage increase above and beyond that which was proposed by the Union.”

In its reply brief the Village reviewed its previous arguments, and commented on the Union position. It said that evidence does not support the comparability of West Bend, Germantown, and Hartford. It argued that regardless of which group of comparables one examines, “no community has a benefit even remotely like the medical reimbursement plan.” The City said that the continuation of this plan will frustrate future voluntary settlements. “The Village has made it clear it will simply not give up until the benefit is removed.”

In response to the Union’s argument that if it had not agreed to give up benefits of the standard plan during the last contract period the Village’s costs today would be more expensive, the Employer asked “would such a plan still be available?” It answered, certainly not in its prior form as a stand alone plan. It argued that the State plan is comparable to coverage provided elsewhere. It said that there is no evidence that other comparable employers gave quid pro quo to negotiate their coverage which is equivalent to the Village’s offer.

The Village said that the Union's assertion that it failed to offer quid pro quo is absurd. It said that the higher wage increase is a permanent change which will be enjoyed indefinitely. It also argued that its proposal to add two new positions to the bargaining unit is significant, and that Union arguments to the contrary are disingenuous.

The Union's reply brief reiterated its position that the Employer failed to show a strong need to terminate the medical reimbursement plan. It said that the "anemic ½ % salary increase, the equivalent of \$8.55-\$16.06 per month depending on the rate of pay," including two new positions in the bargaining unit and changes in bereavement benefits do not constitute quid pro quo. It said that it did not dispute the facts that Jackson has highly competitive wages and benefits and that no other community has such a reimbursement plan. It said that Jackson has always been a leader because the parties had voluntarily agreed on wages and benefits. It cited a prior arbitration award in which the arbitrator (Kessler) observed that the employers higher wage offer in return for a charge to the State Health Plan constituted a proposed buy out of an existing benefit. In that instance the arbitrator said that, "A 'buy out' is not something that is involuntarily imposed." He found that "an imposed buy out unduly alters the relationship between the parties and probably will have a negative impact on future negotiations.

The Union said that it did not consider Washington County as comparable because it operates under "different structures of government" than the village. It cited arbitral authority that "one should not reject a district located in the same labor market and bread basket area out of hand simply because it may be larger than the rest..." It reiterated its belief that West Bend, Hartford and Germantown are appropriate external comparables.

The Union argued that comparisons of benefits received by non-represented employees are not appropriate internal comparisons. It cited comments by other arbitrators that such comparisons could result in employers imposing changes on represented units without bargaining. It also cited a series of decisions in which arbitrators found that employer settlements with some represented units did not establish a pattern of internal settlements as sufficient reason to impose changes in health insurance benefits in arbitration. The Union argued that Jackson's non-unionized employees should not be considered when determining benefits for this unit. The loss of the non represented employees medical reimbursement funds was unilaterally imposed by

the Village. “To include them as a significant comparable group disrupts the fairness inherent in collective bargaining.”

The Union said that the medical reimbursement plan was the result of innovative and creative bargaining to deal with rising health care costs in 1997. It said that the fact that no comparable has this benefit is not a sufficient reason for the Village to terminate the plan. “Eliminating benefits simply because no one else has them would impede labor from securing enhancements and employers from offering incentive for modifications. The chilling effect on labor relations and bargaining would be enormous.” It cited a series of prior arbitration decisions which support that argument.

The Union said that the Village’s statement that the plan has “outlived its usefulness and is no longer appropriate” is not true. “Now, more than ever, with the increase in the employee costs of the State Plan, the reimbursement plan is a necessary bridge to cover gaps created by the loss of the original Blue Cross/Blue Shield plan, the increase in premiums, prescription drugs, and out of pocket maximums.”

DISCUSSION

The parties have stated their positions clearly, and each has argued its cause well. The issue is the Employers effort to not fund the Medical Reimbursement Plan set out in Section 13.01, B of the parties 1998-2000 contract. The operative language in that agreement was:

B. Upon ratification the Village will implement a medical reimbursement program which is qualified under Section 105 and 106 of the Internal Revenue Code. The Village agrees to fund the medical reimbursement plan on behalf of each employee covered by this agreement in monthly payments as follows:

1. \$150 per month for those employees eligible for and/or electing family coverage.

2. \$75 per month for those employees eligible for and/or electing single coverage.

It is clear that the Employer's offer constitutes the take back of an existing benefit. In order to determine whether that take back is reasonable, it is necessary to determine what it is that the Employer is proposing to take away.

Prior to 1998, the Employer paid "100% of the cost of the premiums for hospital and medical insurance" for all employees. The plan that was in effect at that time was the Blue Cross/Blue Shield Standard Plan. The record does not disclose what the cost of the premiums for that coverage was when the parties signed the 1995-1997 contract on March 6th 1995. By September 1997, when the parties were in negotiations for their 1998-2000 contract, the premium for family coverage was \$705.98 a month. By September 23, 1997 the Employer and the Union had started to talk about the terms of the 1998-2000 agreement, "and resolutions of the rising health care cost and how collectively as a group of employees-employers we were going to try to find some way to offer relief to the village." The Union recognized that there would be considerable savings if the employees health care coverage was transferred from BC/BS to the State Plan. The Union was willing to agree to the change in coverage provided that the terms of sharing the savings could be agreed to.

Between September 23, 1997 and January 13, 1998 the parties refined the terms "for providing health insurance options through the [State Plan]." Those terms required the Village to "pay up to 105% of the lowest available cost premium to the insurance provider selected by the employee" under the State Plan. It appears that in 1998 the employees had the option to select one of six different health insurance coverages. The medical reimbursement program, described above, was established in order to "allow employees who select higher cost options an opportunity to be reimbursed for part or all of the extra expense."

The employee's share of the fund has to be utilized for an allowable expense annually, if the employee did not use the full amount of the fund it reverted to the village.

The parties agreement was that the employees should share equally in the savings that would result from transferring coverage from BC/BS Standard Plan to the State Plan. The Employer's contribution of \$75 for those with single coverage and \$150 for those with family coverage was based upon the understanding that the annual savings allocable to the members of this unit would total \$27,028.44. That calculation was based upon the projected 1998 cost for managed health care premiums totaling \$3,168 a month for eight employees, compared to what would have been \$5,420 a month under the BC/BS plan. The Union assumed that the Employer would contribute \$12,600 to the reimbursement fund, based upon six family and 2 single plans, and that the employer would benefit from the additional \$14,428 in premium savings. The parties signed their 1998-2000 agreement on April 8, 1998.

It is not clear from the record why the Blue Cross/Blue Shield premiums varied so greatly in 1997-1998. The disparity may have been because premiums were based on age. The 1998 monthly cost estimate of \$5420 assumed premium costs of \$705.98 for three employees and costs of \$118.05, \$526.74, 779.47, \$841.33 and \$1,036.86 for five other employees. The average cost for what appears to have been six BC/BS family plans and two single plans was estimated to be \$677.54 a month in 1998. Six different insurance coverages were offered under the State Plan, in Washington County in 1998. The number of insurance providers declined each year through 2001. Available plans and family premium charges were:

TABLE I

<u>Company</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Compcare SE	\$620.80	\$683.84	\$789.40	\$879.40
Humana M	\$516.30	\$531.38	\$643.90	\$703.60
Managed H.S.	\$461.80	\$531.38	---	---
Maxicare	\$516.70	---	---	---
Phy Pls SE	\$545.20	\$571.38	\$636.40	---
Prime Care	\$574.06	---	---	---

Based upon the foregoing, the Employer's health insurance premiums were reduced by 41.55% as a result of the switch to the State Plan in 1998. It is not possible to quantify the Employers total savings because there is no evidence how much reverted to the Village at the

end of each year. For the purpose of tracking the Employer's premium cost/savings since 1998, it seems reasonable to compare the lowest monthly family premium available under the State Plan, because six of the eight unit members have selected that coverage. The Managed Health Services premium increased by \$69.58 to \$531.38 in 1999. That was also the cost of Humana's family premium. It appears that seven of the employees selected the Humana plan and one employee selected the standard plan option. The 1999 premium increase was fifteen percent. The 2000 and 2001 premium increases were \$112.52 (21%) and \$59.90 (9.3%) respectively. The total premium savings estimated to be \$27,028 a year in 1997 were reduced to \$3,815 by 2001. While the foregoing calculations are not exact they are reasonably close to being accurate based upon data in the record. It is clear that some part of the Employer's payments to the Medical reimbursement Fund, estimated by the parties at 50% of premium savings, have come from other than that source since 1999. The Employer estimated that there will be a 20% increase in family premiums during 2002. There is some evidence to support that estimate. The Union did not question it.

The parties entered into negotiation for their prior contract anticipating a 41.5% health insurance premium reduction having occurred has been wiped out by premium increases totaling 45% to date. That and the fact that the parties anticipate an additional increase of 20% to \$844 a month for family coverage in 2002 constitutes a substantial change in circumstances.

The parties disagree which municipalities should be included in the pool of external comparables. It is necessary, in interest arbitration, to compare the different offers to settlements "of other employees generally in public employment in the same community and other comparable communities." It is also beneficial to the parties, in the bargaining process, to agree on which other communities are comparable. The parties have agreed that the Village of Slinger and Kewaskum should be included in the pool. The Village argued that West Bend, Hartford and Germantown, suggested by the Union are too large and are in other ways dissimilar. It argued that the Village of Saukville and Thiensville should be included in the pool. The Union argued that, they are not comparable because they are located in Ozaukee County.

It appears to the undersigned that both parties objections to the other's suggestions are pro forma. The objections are simply not supported by the record. All of the proposed

comparables are located within 20 miles of Jackson. There is no evidence regarding the industrial/agricultural economic base for any community. The population range from 3,254 (Thiensville) to 28,597 (West Bend) compared to 4,938 for Jackson and the difference in income and tax levy rates are not so great that they impair the usefulness these other communities provide for comparisons.

If there is merit to the Union's argument that Saukville and Thiensville being located in Ozaukee County, or the Village's argument that Germantown being part of the larger Milwaukee Area are not comparable, that merit is not demonstrated in the record.

It appears rather, that except for West Bend, all of the proposed comparables rely to some extent upon their proximate location in southeastern Wisconsin to the larger Milwaukee Metropolitan area. Geographic location alone requires West Bend and Washington County to be included in comparable comparisons. It is strongly suggested that during future bargaining the parties consider Germantown, Hartford, Kewaskum, Slinger, West Bend, Saukville, Thiensville and Washington County as comparables to the Village of Jackson. In the event that there are compelling reasons for excluding any of those municipalities from the comparable pool, those reasons should be demonstrated on the record during future proceedings.

There are eight members in this unit, their positions and hourly wage rates in 2000 were as follows: one Receptionist \$9.94; one Financial Assistant \$14.37; three Maintenance Worker/Equipment \$16.09; two Maintenance Worker/Wastewater Treatment Plant Technician \$16.34; one Maintenance Worker/Water \$16.64. The parties agree that the wages and fringe benefit packages these employees receive are highly competitive. The Union's offer for 3% across the board increases in each 2001 and 2002 would raise the lowest wage by \$.60 over two years compared to the Employer's 3.5 % two year offer which would increase the rate from \$9.94 to 10.65 an hour, a difference of \$.10 over two years. The highest wage rate would go from \$16.64 to \$17.65 under the Union's offer compared to \$17.82 under the Village's offer, a two year difference of \$.17 an hour.

Comparative data from external comparables leaves a lot to be desired because in at least one instances the composition of the bargaining unit appears to be different (Hartford's Library).

In other instances the job classifications suggest that there are differences in job responsibilities. The Union's offer is lower than most comparable settlements. Only West Bend's 2001 settlement and Thiensville's 2001 and 2002 agreements are at 3 percent. Hartford settled for 3% in 2001 and 2% on each January 1st and July 1st, 2001. Germantown and Kewaskum settled for 3.5% in both 2001 and 2002. Slinger's settlement was 4% each year, and the Saukville agreement was for 4.8% in 2000 and 4.75% in 2001. The Village's wage offer is the more comparable.

It is not clear what health insurance options were or are available in the comparable communities. While the same options under the State Plan have been available from 1998 through 2001 in both Washington and Ozaukee Counties, the record does not disclose what other underwriters offered to provide coverage to employees in comparable communities. It is clear that, for whatever the reason, health insurance expenses have varied a great deal in comparable communities. Germantown and Hartford, both self-funded demonstrate the disparity. Germantown's monthly family premiums was \$500 in 2000 and \$518 in 2001, compared to \$797 in 2000 and \$869 in 2001 in Hartford. In both instances the Employer pays the entire family premium. Slinger also had low premium cost at \$515 in 2000; it increased to \$606 in 2001. Kewaskum's 2000 family premium was \$719, it was \$893 in 2001. Employees contribute 5% toward premium costs in Slinger and they pay 7.5% of the cost in Kewaskum. There is not much information in the record about premium costs in Saukville and Thiensville, except that in Saukville employees contribute 5% of premium cost and Thiensville pays up to 105% of the lowest premium under the State Plan. Jackson pays up to 105% of the lowest cost premium available under the State Plan. The premium cost was \$643 in 2000, \$703 in 2001 and it estimates that the premium will be \$844 a month in 2002. In 2001 the City of West Bend paid \$726, and West Bend employees paid \$20 a month for family coverage. Washington County paid \$590 a month and its employees contributed \$97 a month for family coverage.

No comparable has established a medical reimbursement plan similar to the one that exists in the Village of Jackson. It is not possible to compare the Employer's offer in this instance to its settlement or its offer to the police unit, because except for information about health insurance benefits, there is no evidence in the record about those matters. The record does show that the Village's seven non-represented employees and the six members of its Police unit

transferred their insurance coverage from BC/BS to the State Plan in 1998. The Police unit has received the same benefit of the Medical Reimbursement fund as this unit. The Police unit has also refused to agree to the Employer's offer for settlement, at least in part, because of the Employer's refusal to continue the Medical Reimbursement Fund. That unit's disagreement with the Village is also in arbitration. The non-represented employees access to Medical Reimbursement was terminated as of January 1, 2001. Since that time those employees have received insurance coverage under the State Plan and some reimbursement toward unreimbursed medical and dental expense. "They have a less advantageous system than the bargaining unit employees." The Employer offered to provide the members of this unit the same benefit that it provides to the non-represented employees, that offer was rejected. About all that can be concluded from the record about internal comparables is that the Village has been consistent in its position that "it will simply not give up until the benefit is removed."

The Employer's offer to add the Assistant Engineer and Assistant Building Inspector to the bargaining unit is puzzling. It appears from the recognition clause in the parties contract that those positions are already included in the unit. Its proposed change to the bereavement pay leave provision of the contract appears to arise out of the desire for administrative consistency which will not be substantially effect the employees one way or another.

It has been difficult to apply the statutory standards for arbitral decision making to the unique facts that give rise to this dispute. It is clear that the Medical Reimbursement Fund was agreed to as an equitable method of sharing the anticipated \$27,000 windfall savings the Village enjoyed when this Unit agreed to change insurance coverage from the BC/BS Standard Plan to the State Plan. The problem is that the language of the parties' 1998-2000 contract does not provide for the termination of the benefit. There is merit to the Union's position that its members gave something of value when they agreed to the change in their health insurance benefit. As their contract is drafted the employees new coverage includes the right to receive reimbursement from the fund. The Union really did not have any choice but to resist the Employer's effort to take away the reimbursement benefits.

The Employer's position is equally clear. However, behind the threshold question of how can we be expected to share premium savings that are not enjoyed, there is the question, must we

pay for 100% of the cost for employee's health care? There is no basis to support an argument that a municipal employer must absorb ever increasing health care costs.

Problems with this county's health care system have been investigated and discussed for many years. Problems caused by health care costs far outpacing inflation and maintaining an adequate health care delivery system have been recognized at all levels of government and in the private sector. The movement toward managed care, once thought to be a solution to some problems has resulted in a whole new set of complaints and concerns.

The Wisconsin Legislature first acted to solve the State's problems, as an employer, by creating the State Plan in the early 1980's. Since that time, many municipal employers including school districts have offered their employees health insurance coverage under the State Plan. That plan provides that the State of other municipal employers will pay an amount up to 105% of the cost of the least expensive health care premium toward the actual cost of an insured employee's premium cost. Many of the approved plans require co-payment for prescription drugs and outpatient services.

The Employer's offer in this proceeding appears to be the most reasonable. As noted at pages 14 and 15 above, there has been a substantial change in circumstances since the Medical Reimbursement Fund language was inserted in the parties' agreement. Based upon the record, it is likely that if the parties had been unable to agree to the terms of their prior agreement, an arbitrator probably would have preferred an Employer's offer to provide family coverage under the State Plan at monthly premium cost of \$462 over a Union offer to retain BC/BS Coverage at the cost of \$706 a month. If the parties had not changed coverage in 1998, and the question in this proceeding was BC/BS \$892 (Kewaskum's 2001 premium cost for Blue Cross PPO) or \$706 for Humana under the State Plan, the State Plan would have been preferred, if the other elements were as presented in this proceeding.

The preference for the Employer's offer is not based upon finding that the Employer offered quid pro quo. The Employer's wage offer is in the mid range of external comparable settlements, and there is no evidence of other internal wage offers. The Employer's offer is the most reasonable because it continues the Village's agreement to provide those employees who

choose to elect coverage through the State Plan up to 105% of the cost of the lowest cost premium toward what ever insurance coverage is available to employees under the State Plan. It is recognized that all employees will now be responsible for paying deductibles for prescription drugs, and any employee who chooses to elect coverage that costs more than 105% of the lowest cost premium will be responsible or the additional cost. Nonetheless, the health insurance benefit received under the Employer's offer will be equal to or more generous than that offered by comparables.

The Union's offer would require the Employer, for the first time, to allocate an additional \$14,400 a year of general tax revenue to insulate these eight employees from increasing health care costs. The cost of providing that same benefit to all 21 of the Village employees would be an additional \$37,800 GPR per year. The Village never agreed to that commitment. To require it to do so in this proceeding would be unreasonable. For the reasons discussed above, the Village of Jackson's offer shall be incorporated into the parties 2001-2002 collective bargaining agreement.

Entered at Monona, Wisconsin this 21st day of December 2001.

John C. Oestreicher, Arbitrator